

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number

Q63036

Mail Stop AF
 Commissioner for Patents
 P.O. Box 1450 Alexandria, VA 22313-1450

Application Number

09/782,017

Filed

February 14, 2001

First Named Inventor

Hiroshi KAMIYA

Art Unit

3627

Examiner

Maria Teresa T.
THEIN

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

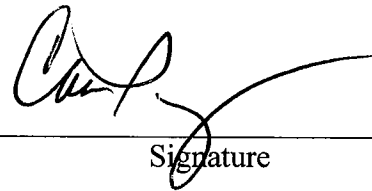
This request is being filed with a notice of appeal

The review is requested for the reasons(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

☒ I am an attorney or agent of record.

Registration number 40,766



Signature

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June 9, 2008

Date

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Docket No: Q63036

Hiroshi KAMIYA

Appln. No.: 09/782,017

Group Art Unit: 3627

Confirmation No.: 3808

Examiner: Maria Teresa T. THEIN

Filed: February 14, 2001

For: COMMODITY ORDER ISSUING AND ACCEPTING METHOD, SYSTEM THEREOF,
AND COMMODITY ORDER ACCEPTING APPARATUS

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP AF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Pursuant to the Pre-Appeal Brief Conference Pilot Program, and further to the Examiner's Final Office Action dated January 8, 2008, Applicant files this Pre-Appeal Brief Request for Review. This Request is also accompanied by the filing of a Notice of Appeal.

Applicant turns now to the rejections at issue:

Claims 1, 4, 7, 10, and 13-42 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Murcko, Jr. (U.S Patent No. 6,578,014; hereinafter "Murcko") in view of Benton et al. (US Patent No. 4,926,325; hereinafter "Benton"). Claims 2-3, 5-6, 8-9, and 11-12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Murcko and Benton and further in view of O'Hagan (US Patent No. 6,314,406). Claims 43-47 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Murcko and Benton and further in view of Walker et al. (US Patent No. 6,405,174; hereinafter "Walker"). Applicant traverses the rejections for *at least* the following reasons.

As an initial matter, Applicant respectfully submits that the claims are patentable for reasons submitted in the Response filed on April 4, 2008, **which are incorporated herein by reference** and summarized as follows. Moreover, Applicant respectfully disagrees with the Examiner's unreasonably broad continued interpretation of the clearly defined limitation of the independent claims 1, 4, 7, 10 and 37.

Independent claims 1, 4, 7, 10 and 37 recite, *inter alia*, "wherein said second electronic document comprises a formula for calculating a payment price based on said order issuer's payment date." The Examiner asserts that Murcko discloses these elements of the independent claims in FIG. 18, col. 16, lines 59-61, col. 27, line 59-col. 28, line 14 and FIG. 17. Applicant respectfully disagrees for at least the following reasons.

Murcko is directed to a method and apparatus for a commercial network system designed to facilitate transactions for which a buyer determines the price he or she pays after receiving the information, goods, and/or services from a seller (column 3, lines 41-46). Murcko discloses an item database 500 in which payment date 516 stores the date on which the buyer assigns the payment amount for the item (FIG. 5; and column 16, lines 59-61). Moreover, Murcko discloses a standard form for buyers to make item request 1700 (FIG. 17). In the portion cited by the Examiner, Murcko discloses that:

- (i) a buyer can optionally provided guidance about what payment they might be willing to pay for the desired item;
- (ii) the buyer can specify one cutoff percentile for sellers providing items; and
- (iii) the buyer is able to make item requests to specific sellers (i.e., the buyer can only choose among sellers who are willing to accept item requests from the buyers who meet the sellers requirements such as the buyer having an average payment of at least a certain amount).

However, there is no disclosure of **a formula for calculating a payment price based on said order issuer's payment date.** Specifically, Murcko discloses that the buyer provides the payment amount that they might be willing to pay for an item (column 27, lines 65-67) and does not disclose **a formula used for calculating the payment amount** (the alleged payment price). Further, Murcko also does not disclose calculating the payment amount (the alleged payment price) **based on an order issuer's payment date.** In fact, the Examiner asserts that "Murcko does not explicitly disclose inputting the order issuers' payment date and transmitting the issuers' payment date (page 4, lines 1-2 of the January 8th Office Action). As such, it would be improper for the Examiner to contend that Murcko discloses calculating a payment price **based on an order issuer's payment date.**

Moreover, the Examiner asserts that "in column 27, lines 49-56, the buyer can specify an item request such as the buyer indicating that he/she is willing to or an approximate amount or he/she can split between sellers" (page 8, lines 11-13 of the January 8th Office Action). Applicant respectfully submits again that Murcko merely discloses that the buyer can indicate an approximate amount that they are willing to pay and does not disclose or remotely suggest a **formula** for calculating the payment price **based on the issuer's payment date.**

Furthermore, even if, *assuming arguendo*, Murcko discloses that "the buyer sets the payment amount for an item, date and time appears and buyer has a predetermined period of time in which to make a payment in" (page 9, lines 6-8 of the January 8th Office Action), it still does not disclose anything about a formula that calculates the payment prices based on the issuer's payment date.

Benton, O'Hagan and Walker also do not disclose "wherein said second electronic document comprises **a formula for calculating a payment price based on said order issuer's payment date**".

In the Advisory Action dated April 30, 2008, the Examiner asserts that:

Murcko discloses a payment amount which stores the amount that the buyer decides to pay for the item and a payment date which store the date on which the buyer assigns the payment amount for them (col. 16, lines 58-61). Murcko also discloses a buyer can optionally provide guidance (Figure 17, ref. no. 1714) about what payment amount they might be willing to pay for the desired item (col. 27, lines 65-67). Furthermore, Murcko also discloses a buyer has the ability to change payment amounts that he/she previously assigned, up to the time the payment is made; and a buyer can also raise a payment amount, but cannot lower it, once it is initially set (col. 29, lines 15-21). Murcko discloses the buyer and sellers have the ability to optionally transact through traditional protocols such as auction, negotiation, buyer sets price before transaction and seller sets price before transaction (col. 29, lines 47-50).

The Examiner alleges that the above methods described above in Murcko disclose a formula for calculating a payment price based on said order issuer's payment data. Applicants respectfully disagree. Applicants submit that Murcko neither discloses a formula nor any correlation between the payment price and the order issuer's payment data. That is, Murcko appears to disclose that the buyer sets a desired price to pay independent of a payment date. Therefore, Murcko does not a formula for calculating a payment price based on said order issuer's payment data.

In view of the above, Applicant respectfully submits that independent claims 1, 4, 7, 10 and 37 and their dependent claims are allowable over the cited references.

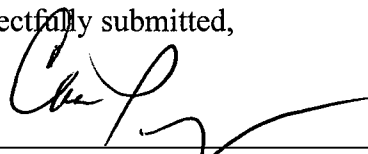
In addition, Applicant submits that claim 2, 5, 8 and 11 recite "calculating a reduced price corresponding to said transaction condition and said order issuer's payment date on said

order accepting device.” The Examiner concedes that Murcko and Benton do not explicitly disclose the calculating reduced price corresponding the transaction condition, but asserts that O’Hagan discloses calculating a reduce price corresponding to the transaction condition (column 21, lines 15-16, FIG. 32, column 23, lines 42-52; column 28, lines 45-50; column 32, lines 1-3). However, the Examiner continually fails to address all the limitations of claims 2, 5, 8 and 11. Specifically, the Examiner fails to indicate where O’Hagan discloses “calculating a reduced price corresponding to ... **said order issuer's payment date on said order accepting device.**” Moreover, the Examiner does not even respond to the arguments submitted with the April 4, 2008 Response corresponding to the elements recited above with regard to claims claim 2, 5, 8 and 11.

Applicants respectfully submit that O’Hagan merely discloses that the confirmation page includes information relating to the product price, product availability, coupons, discounts, terms on coupons/discounts etc. (column 21, lines 11-19). However, O’Hagan does not disclose “calculating a **reduced price** corresponding to ... **said order issuer's payment date on said order accepting device.**”

In view of the above, Applicant submits that the rejections improper and that the application is in condition for allowance.

Respectfully submitted,



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Date: June 9, 2008 (June 8, 2008 being a Sunday)